REMARKS:

Claims 2-10, 12-18, 24-28 and 31 were presented for examination and were pending in this application. In an Official Action dated February 11, 2005, claim 31 was allowed and claims 2-10, 12-18, and 24-28 were rejected. Applicants thank Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicants further thank Examiner for indicating the allowability of claim 31 and for withdrawing the objections to the Specification and Drawings. The Specification is amended herein to correct a minor typographical error and reflect the proper name of the copyright owner.

Based on the following Remarks, Applicants respectfully request that Examiner reconsider all outstanding objections and rejections, and withdraw them.

Response to Claim Rejections

Claims 1, 2, 6-12, 16-19, 22-25 and 29-30 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent number 6,122,670 to Bennett et al. (hereinafter "Bennett"). Applicants kindly remind Examiner that claims 1, 11, 19, 22, 23 and 29-30 were cancelled by previous Amendment and Response. With respect to claims 2-10, 12-18, and 24-28, Applicants respectfully traverse the rejection because Bennett does not disclose each and every element of the invention as recited in these claims.

Bennett discloses a system that buffers data being passed through a protocol stack on a networked computer node. Each layer in the protocol stack reads data in the buffers from a lower protocol for incoming messages and reads data in the buffers from a higher protocol for outgoing messages.

Independent claims 2, 12, and 24 recite the use of transmission direction of the data units for example by "associating a transmission direction with each circuit flow object." Associating a transmission direction with the circuit flow objects beneficially allows specifying relationships between the communicating computers, e.g., based on various criteria, such as whether the source computer functions as the client or the server in a client-server network.

The Federal Circuit has indicated that "[d]uring patent examination, the pending claims must be 'given their broadest reasonable interpretation consistent with the specification.'" See MPEP 2111 (citing *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000))(emphasis added). Examiner's interpretation that "for example, the transmissions and transmission directions are associated with the movement of the objects from one protocol layer to the next, not from one computer to another" is not only inconsistent with the Specification but also with the plain meaning of the claim language itself.

By way of example, claim 2 recites in the preamble "sequencing and reassembling messages from protocol data units exchanged in a communications channel between two computers" (emphasis added). Although the preamble may simply state purpose or use for the invention and not necessarily import limitations in the claim, it must be read in the context of the entire claim. See MPEP 2111.02. In light of the preamble, the first element of the claim recites:

> creating a protocol flow object to represent each protocol layer used by the communications channel, each protocol flow object having a circuit element associated with each transmission direction in the channel;

By referring to "the communication channel," Applicants make reference to the antecedent basis provided in the preamble. Thus, the transmissions and transmission directions recited in the claim are directions in the channel, which as clarified in the preamble is the "communications channel between two computers." Thus, based on the plain meaning of the claim language itself,

no reasonable interpretation of channel can refer to "movement of the objects from one protocol layer to the next."

Moreover, when the claim language is interpreted consistent with the Specification, it becomes apparent that the transmission direction relates to the transmission in the channel between the two computers. For example, the Specification describes:

> A primary circuit element 403 is linked to a series of circuit flow objects that represent the data being transmitted in one direction between the computers 301 and 303 and define a one-way circuit 321 in the communications channel 320. An alternate circuit element 405 is linked to a series of circuit flow objects that define the opposite circuit 323 within the channel 320. In the present embodiment, the primary circuit is determined by 15 the transmission direction of the first protocol data unit that is received in the frame capture buffer but it will be appreciated that the primary and alternate circuits can be pre-determined based on various criteria, such as the whether the source computer functions as the client or server in a client-server network.

See Specification at p. 13, lines 10-18 (emphasis added). In the Specification, the transmission direction of the circuit elements is described with respect to the direction in the communications channel between the two computers. As shown above, in one embodiment this direction may be pre-determined based on whether the transmitting computer is a client or a server. Clearly, movement directions of objects in a protocol stack is unrelated to the source computer being a client or a server. Thus, the Specification is also inconsistent with an interpretation of the transmission direction associated with the circuit elements relating to "movement of the objects from one protocol layer to the next."

Accordingly, the buffering of data flowing up and down the protocol stack in Bennett do not teach the claimed circuit elements that are associated with a transmission direction of data within a communications channel between two computers. Bennett's data flow within a protocol

stack in a single computer cannot be properly interpreted as teaching or suggesting circuit elements associated with transmission direction of data between two computers.

Claims 3-5, 13-15, 21, and 26-28 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Bennett in view of Stevens (TCP/IP Illustrated, Volume 1 ; Stevens, W Richard; Addison Wesley Publishers, 1994; pages 148-151). Applicants kindly remind Examiner that claim 21 was previously cancelled. With respect to claims 3-5, 13-15, and 26-28, Applicants respectfully traverse the rejection because the combination of Bennett and Stevens does not teach or suggest each and every element of the invention as recited in these claims.

Claims 3-5, 13-15 and 26-29 depend from one of claims 2, 12 or 24. Because Bennett does not teach or suggest each and every limitation in claims 2, 12 and 24, Stevens must disclose the claimed elements that are missing in Bennett to have a proper *prima facie* case of obviousness for claims 3-5, 13-15 and 26-29. However, the disclosure relied on in Stevens is directed toward fragmented data. Stevens fails to provide any disclosure that teaches or suggests the "transmission direction" elements shown above to be missing in Bennett. Therefore, the combination of Bennett and Stevens cannot render obvious Applicants' invention as claimed in claims 3-5, 13-15 and 26-29.

Therefore, based on these Remarks, Applicants respectfully submit that for at least these reasons claims 2-10, 12-18, and 24-28 are patentably distinguishable over the cited references, alone and in combination. Therefore, Applicants respectfully request that Examiner reconsider the rejection, and withdraw it.

Conclusion

In sum, Applicants respectfully submit that claims 2-10, 12-18, and 24-28, as presented herein, are patentably distinguishable over the cited references (including references cited, but

not applied). Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them.

In addition, Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
STUART JOHN MACDONALD, ET AL.

Date: 4/11/2005 By: _____

Hector J. Ribera, Attorney of Record
Registration No. 54,397
FENWICK & WEST LLP
801 California Street
Mountain View, CA 94041
Phone: (650) 335-7192
Fax: (650) 938-5200
E-Mail: hribera@fenwick.com